IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25-02-2005

CORAM :

THE HONOURABLE MR. JUSTICE A. KULASEKARAN

C.R.P. (PD) No. 2838 of 2003
and
C.M.P. No. 21418 of 2003

Balasubramaniam Guhan .. Petitioner/Defendant

Versus

T. Hemapriya .. Respondent/Plaintiff

Revision under Article 227 of The Constitution of India against the Order dated 11-02-2003 made in I.A. No. 546 of 2002 in O.S. No. 276 of 2002 on the file of Ist Additional Subordinate Court, Erode.

For Petitioner : Mr. R. Swaminathan

For Respondent : Mr. D. Ravichander

ORDER

The petitioner is the defendant in the suit filed by the respondent in O.S. No. 278 of 2002. Pending that suit, the petitioner herein has filed I.A. No. 546 of 2002 under Order VII Rule 11 CPC to reject the suit filed by the respondent. The said I.A. No. 546 of 2002 was dismissed by the court below, hence this revision.

2. The respondent herein has filed O.S. No. 278 of 2002 before the Subordinate Judge, Erode for a declaration to declare the decree of divorce passed by the Sheriffdom of South Stratheclyde Dumfries and Galloway at Dumfries Court, Scotland in F. 164/01 for divorce seeking to dissolve the marriage between the respondent and the petitioner as ultra vires, unsustainable, illegal, unenforceable and without jurisdiction; and for a consequential injunction restraining the petitioner herein from enforcing the said decree or claim any rights under the said decree either by seeking to take a second wife or otherwise.

3. The case of the respondent as contained in the plaint is as follows:-

The respondent and petitioner are Hindus by birth and are domiciled in India at the time when their marriage was solemnised according to Hindu rites and customs on 01-03-1996 at Erode, Tamil Nadu. After the marriage, they lived at Erode for about two weeks and thereafter the petitioner left to England to continue his studies. Subsequently, the respondent also joined the petitioner at England on 15-06-1996 and both of them lived at Scotland and also at various other

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places in England. According to the respondent, the petitioner used to pick up quarrel with her even on trivial matters and exhibited uneven temper. On several occasions, the respondent was beaten by the petitioner without there being any reason. The respondent waited with the hope that the petitioner would realise his mistake. It is stated that on one occasion, the petitioner beaten her with the result she sustained bleeding injuries and she was driven out of the matrimonial home and thereafter she had to take shelter in her friend's house. Subsequently, the respondent also returned to India and many attempts were made by her parents to convince the petitioner to take back the plaintiff, but all became vain. The respondent is always ready and willing to join the petitioner. While things are such, the respondent came to know that the petitioner had moved the Court in Sheriffdom of South Stratheclyde Dumfries and Gallowway at Dumfries suppressing the material facts and obtained a decree of Divorce on 27-02-2002 in F 164/01 dissolving the marriage. According to the respondent, both the respondent and petitioner being Hindus, the Decree of Divorce granted by Foreign Court is unenforceable as the Law of Hindu with reference to Hindu Marriage Act has not been followed; that the Decree was passed by the Foreign Court without hearing the respondent as she was in India; that taking advantage of the Decree of Divorce granted by the Foreign Court, the petitioner is planning to get re-married, hence she filed the above suit.

4. According to the petitioner, the respondent herein is a British national by birth and is certainly bound by the decree passed by the Court within the territorial jurisdiction of Britain; that he was domiciled in U.K. for the past eight years and was accorded the permanent resident status since 1998; that the respondent herein had abundant opportunity to raise the question of jurisdiction before the Court at Dumfries, since Form 15 and 26 were personally served on her to challenge the jurisdiction and she was explained about her entitlement to have legal aid and having ignored the same, the respondent has filed the vexatious suit, which suffers from lack of jurisdiction and prayed to reject the plaint filed by the respondent herein but erroneously dismissed the application, hence the present revision petition.

5. The learned counsel for the petitioner submits that the court below erred in holding that the provisions of Order VII Rule 11 will not be attracted to the facts of the case; that when the cause of action alleged is neither complete nor in accordance with law, it is not necessary for the defendant to be called upon to enter into the defence and to undergo the trial; that the learned Judge failed to see that the validity of a decree has to be decided with reference to the Law prevalent in the country in which the judgment was passed as per the principles of International Law; if the respondent wanted to raise the question of jurisdiction, it was open to her to raise the same; that Sec. 21 (A) of CPC bars the suit filed by the respondent and it will clearly bring the matter under Order VII Rule 11 CPC which was lost sight of by the Court below and prayed for setting aside the order impugned in this revision petition.

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6. The learned counsel for the petitioner relied on the following decisions in support of his case.

i) (Kedar Pandey v. Narain Bikram Sah) AIR 1966 Supreme Court Page No.160 wherein in Paragraph Nos. 12, 15, 18 and 21, it was held thus:-

> "12..... In our opinion, the decisions of the English courts in, (1869) 1 Sc & Div 441, and, (1878) 9 Ch D 441, represent the correct law with regard to change of domicile of origin. We are of the view that the only intention required for a proof of a change of domicile is an intention of permanent residence. In other words, what is required to be established is that the person who is alleged to have changed his domicile of origin has voluntarily fixed the habitation of himself and his family, in the new country not for a mere special or temporary purpose, but with a present intention of making it his permanent home.
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> 15. The High Court considered that for the determination of the question of domicile of a person at a particular time, the course of his conduct and the facts and circumstances before and after that time are relevant. We consider that the view taken by the High Court on this point is correct and for considering the domicile of Narain Raja on the date of coming into force of the Constitution of India his conduct and facts and circumstances subsequent to the time should also be taken into account. This view is borne out by the decision of the Chancery Court in In re Grove Vaucher v. Solicitor of the Treasury, (1888) 40 Ch D 216, in which the domicile of one Marc Thomegay in 1744 was at issue and various facts and circumstances after 1744 were considered to be relevant....
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> 18. Taking all the events and circumstances of Narain Raja's life into account we are satisfied that long before the end of 1949 which is the material time under Article 5 of the Constitution, Narain Raja had acquired a domicile of choice in India. In other words, Narain Raja had formed the deliberate intention of making India his home with the intention of permanently establishing himself and his family in India. In our opinion, the requisite animus manendi has been proved and the finding of the High Court is correct.
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> 21. For the reasons expressed, we hold that Narain Raja had acquired domicile of choice in India when Article 5 of the Constitution came into force. We have already referred to the finding of the High Court that Narain Raja was ordinarily resident in India for 5 years immediately preceding the time when Article 5 of the Constitution came into force.

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It is manifest that the requirements of Article 5 (c) of the Constitution are satisfied in this case and the High Court rightly reached the conclusion that Narain Raja was a citizen of India at the relevant time.

ii) (P. Ramesh Kumar v. Secretary, Kannapuram Grama Panchayat and another) AIR 1998 Kerala 95 wherein in para-5 it was held thus:-

"5. Even if the petitioner's contention with regard to the time frame is accepted, the petitioner cannot escape another clutch that the Act does not apply to the petitioner's wife. Admittedly by the petitioner, his wife is a Japanese Lady having Japanese Citizenship and is on temporary visit to India, her husband's place. Section 5 makes it clear that the Hindu Marriage shall be a marriage between two Hindus. That means that they shall be Hindus to which the Act applies. Section 1 (2) of the Act specifically makes it clear that the Act extends to the whole of India except the State of Jammu and Kashmir and also that it applies to Hindus domiciled in the territories to which this Act extends, who are outside the said territories. Therefore, the Act will apply to a Hindu outside the territory of India, only, if he is a Hindu domiciled in the territory of India. Therefore, only those Hindus having permanent residence of India will be covered by the Hindu Marriages Act. In other words, the petitioner's wife, a Buddhist, can be taken as a Hindu for the purpose of application of this Act, as contained in Section 2 (1) (b), if she should also satisfy the application clause as contained in Section 1 (2) (b) of the said Act. For that, she shall be domicile of India residing in Japan. Domicile means permanent resident. The petitioner's wife is not a permanent resident of India and therefore the Act does not apply to her. So the marriage between the petitioner and his Japanese wife is not a Hindu Marriage to be registered under Section 8 read with the Rules framed there under. Therefore, the petitioner is not entitled to any of the reliefs prayed for. The Original petition fails."

iii) (Y. Narasimha Rao and others Vs. Y. Venkatalakshmi and another) 1991 Supreme Court Cases (Cri) 626 wherein in para-21 it was held thus:-

"21. The aforesaid rule with its stated exceptions has the merit of being just and equitable. It does no injustice to any of the parties. The parties do and ought to know their rights and obligations when they marry under a particular law. They cannot be heard to make a grievance about it later or allowed to bypass it by

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subterfuges as in the present case. The rule also has an advantage of rescuing the institution of marriage from the uncertain maze of the rules of the Private International Law of the different countries with regard to jurisdiction and merits based variously on domicile, nationality, residence — permanent or temporary or ad hoc, forum, proper law etc. and ensuring certainty in the most vital field of national life and conformity with public policy. The rule further takes account of the needs of modern life and makes due allowance to accommodate them. Above all, it gives protection to women, the most vulnerable section of our society, whatever the strata to which they may belong. In particular it frees them from the bondage of the tyrannical and servile rule that wife's domicile follows that of her husband and that it is the husband's domiciliary law which determines the jurisdiction and judges the merits of the case.

iv) (Central Bank of India Ltd Vs. Ram Narain) AIR 1955 SC 36 wherein in paragraphs 6 and 8 it was held thus:-

"6. .....Be that as it may, two constituent elements that are necessary by English law for the existence of domicil are: (1) a residence of a particular kind, and (2) an intention of a particular kind. There must be the factum and there must be the animus. The residence need not be continuous but it must be indefinite, not purely fleeting. The intention must be a present intention to reside for ever in the country where the residence has been taken up.

It is also a well established proposition that a person may have no home but he cannot be without a domicil and the law may attribute to him a domicil in a country where in reality he has not. A person may be a vagrant as when he lives in a yacht or wanderer from one European hotel to another, but nevertheless the law will arbitrarily ascribe to him a domicil in one particular territory. In order to make the rule that nobody can be without a domicil effective, the law assigns what is called a domicil of origin to every person at his birth. This prevails until a new domicil has been acquired, so that if a person leaves the country of his origin with an undoubted intention of never returning to it again, nevetheless his domicil of origin adheres to him until he actually settles with the requisite intention in some other country.

8. .In these circumstances, if one may use the expression, Ram Narain's domicil of origin was in the district of Multan and when the district of

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Multan fell by the partition of India in Pakistan, Ram Narain had to be assigned Pakistan domicil till the time he expressed his unequivocal intention of giving up that domicil and acquiring Indian domicil and also took up his residence in India. His domicil cannot be determined by his family coming to India and without any finding that he had established a home for himself there. Even if the animus can be ascribed to him the factum of residence is wanting in his case; and in the absence of that fact, an Indian domicil cannot be ascribed to Ram Narain. The subsequent acquisition by Ram Narain of Indian domicil cannot affect the question of jurisdiction of courts for trying him for crimes committed by him while he did not possess an Indian domicile....."

v) (State of Bombay vs. Bhanji Munji and another) AIR 1955 SC 41 wherein it was held thus:-

"There can be no doubt on these facts that she must be held to have migrated from the territory of India after 01-03-1947. Even if therefore Art.5 can be said to be applicable to her on the assumption that Captain Narayan Singh was her husband and that her domicile was that of her husband, the facts bring her case under Art.7. Article 7 clearly overrides Art.5. It is peremptory in its scope and makes no exception for such a case, i.e., of the wife migrating to Pakistan leaving her husband in India. Even such a wife must be deemed not to be a citizen of India unless the particular facts bring her case within the proviso to Art.7."

vi) (M.K. Sivagaminatha Pillai vs. K. Nataraja Pillai and others) AIR 1961 Madras 385 wherein a Division Bench of this Court held in thus:-

"A decree of a foreign Court, even if passed exparte, will be binding on the parties thereto and will be conclusive under S.13 of the Civil Procedure Code, if based on evidence taken and the decision is given by the foreign Court on a consideration of the evidence. Where, however, the decree of the foreign Court is passed as a result of the default of the defendant in furnishing security as directed by the Court, it is not one given on merits and will not be conclusive. AIR 1958 Mad 203, Foll: AIR 1941 Pat 109.

7. On behalf of the respondent, it is submitted that both the petitioner and respondent are Hindus by birth and therefore the dissolution of marriage can be made only after satisfying the ingredients of Section 13 of the Hindu Marriage Act; that the petitioner has obtained an exparte decree knowing that the respondent

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is not at all in that Country where the petition for Divorce has been filed and in such event it is open to the respondent to attack the validity of the same under Section 13 CPC, hence the suit is filed for declaration; that the petitioner and respondent have stayed in the country temporarily and not habitually, where the Court has passed an order; that the respondent came back to India in November 1999 and prayed for dismissal of the revision petition.

8. The learned counsel appearing for the respondent relied on the below mentioned decision in support of his case:-

i) (International Woollen Mills v. Standard Wool (U.K.) Limited) (2001) 5 Supreme Court Cases 265 wherein in para-28 it was held thus:-

> 28. In the case of Trilochan Choudhury v. Dayanidhi Patra the abovementioned decision in Chintamoni Padhan case has been overruled. In this case it is held that under Section 13(6) even an ex parte judgment in favour of the plaintiff may be deemed to be a judgment given on merits if some evidence is adduced on behalf of the plaintiff and the judgment, however brief, is based on a consideration of that evidence. Where, however, no evidence is adduced on the plaintiff's side and his suit is decreed merely because of the absence of the defendant either by way of penalty or in a formal manner, the judgment may not be one based on the merits of the case. In our view this authority lays down the correct law.

9. The petitioner herein has filed the interim application to reject the plaint invoking Rule 11 of Order VII CPC. If, on a meaningful reading of the plaint, if it is manifestly vexatious, meritless in the sense not disclosing a clear right to sue, for want of jurisdiction, the plaint is liable to be rejected under Order VII Rule 11 CPC.

10. Mr. Swaminathan, learned counsel for the petitioner canvassed that the respondent herein has deliberately failed to mention her Nationality in the plaint and in the absence of jurisdictional fact namely the Nationality, the Courts in India, particularly at Erode will not have jurisdiction to entertain the suit. It is further submitted by the learned counsel for the petitioner that the respondent is a British domicile and she is certainly bound by the decree passed within the territorial jurisdiction of Britain; that the petitioner has domiciled in U.K. for the past eight years and has been accorded permanent residential status since 1998; that the petitioner is intending to continue his residence in U.K. and it was also known to the respondent herein; that the plaint has been served on the respondent by the foreign Court and despite opportunity granted by the foreign court, the respondent has not challenged the proceedings initiated by him, hence it became final.

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11. The Apex Court while dealing with a question where foreign judgment res judicata, how domicile be determined held in (Sankaran Govindan vs. Lakshmi Bharathi and others) AIR 1974 Supreme Court 1764

wherein in paragraph Nos. 16, 20, 22, 23, 24, 30, 36, 40, 41 and 46 thus:-

> "16. It is a well established principle of Private International law that if a foreign judgment was obtained by fraud, or if the proceedings in which it was obtained were opposed to natural justice, it will not operate as res judicata.
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> 20. Domicile is a mixed question of law and fact and there is perhaps no chapter in the law that has from such extensive discussion received less satisfactory settlement. This is no doubt attributable to the nature of the subject, including as it does, inquiry into the animus of persons who have either died without leaving any clear record of their intentions, but allowing them to be collected by inference from acts often equivocal; or who, being alive and interested, have a natural tendency to give their bygone feelings a tone and colour suggested by their present inclination. The traditional statement that, to establish domicile, there must be a present intention of permanent residence merely means that so far as the mind of the person at the relevant time was concerned, he possessed the requisite intention. The relevant time varies with the nature of the inquiry. It may be past or present. If the inquiry relates to the domicile of the deceased person, it must be ascertained whether at some period in his life he had formed and retained a fixed and settled intention of residence in a given country. One has to consider the tastes, habits, conduct, actions, ambitions, health, hopes and projects of a person because they are all considered to be keys to his intention to make a permanent home in a place....
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> 22. The nature of fraud which vitiates a judgment was explained by De Grey, C.J. in Duchess of Kingston case[5]. He said that though a judgment would be a res judicata and not impeachable from within, it might be impeachable from without. In other words, though it is not permissible to show that the court was mistaken, it might be shown that it was misled. There is an essential distinction between mistake and trickery. The clear implication of the distinction is that an action to set aside a judgment cannot be brought on the ground that it has been decided wrongly, namely, that on the merits, the decision was one which should not have been rendered, but that it can be set aside if the court was imposed upon or tricked into giving the judgment.

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24. It is now firmly established that a foreign judgment is impeachable for fraud in the sense that upon proof of fraud it cannot be enforced by action or operate as res judicata.....

30. .....As Garrow, J. said in Jacobs v. Beaver the fraud relied upon must be extrinsic or collateral and not merely fraud which is imputed from alleged false statements made at the trial which were met with counter-statements and the whole adjudicated upon by court and so passed into the limbo of estoppel by the judgment. That estoppel cannot be disturbed except upon allegation and proof of new and material facts which were not before the former court and from which are to be deduced the new proposition that the former judgment was obtained by fraud.

33. It would appear that till 1939, Krishnan had the intention to return to India. But when he acquired a comfortable practice and purchased a house in Sheffield, his intention changed. Although he was saying in some of his letters after 1939 that he would return and settle down in Travancore, that was with the predominant idea of getting from Padmanabhan his share of the income. If he had made it clear that he would not return, the chances of Padmanabhan accounting for the income he had been taking from his (Krishnan's) share of the properties were remote. Exhibits 12, 13, 14, 15, 16 and 17, all written by Miss Hepworth after the death of Krishnan, make it abundantly clear that Krishnan had absolutely no intention of returning to India.....

36. The fraud which vitiates a judgment must generally be fraud of the party in whose favour the judgment is obtained. It was the administrators who obtained Exhibit 56 Order and by no stretch of imagination could it be said that they practised any fraud by adducing evidence which they knew was false or induced any person or witness to give false evidence or file any false affidavit. Nor could it be said that the English court was misled by what the first defendant said about the domicile of Krishnan, as persons who were more competent to speak about the domicile of Krishnan had filed affidavits and tendered oral evidence to the effect that Krishnan died domiciled in England.

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40. Now, it is a well established proposition in Private International law that unless a Foreign court has jurisdiction in the international sense, a judgment delivered by that court would not be recognized or enforceable in India. The guardians of the minors did not enter appearance on behalf of the minors and so it cannot be said that the minors through the guardians submitted to the jurisdiction of the English court.

41. The true basis of enforcement of a foreign judgment is that the judgment imposes an obligation upon the defendant and, therefore, there must be a connection between him and the forum sufficiently close to make it his duty to perform that obligation. If the principle upon which judgments are enforceable be comity, the Court of Queen's Bench in the above case said that, having regard to the English practice of service out of the jurisdiction, it would have reached a different conclusion.

46. .....Section 41 of the Evidence Act speaks only of a final judgment, order or decree of a competent court, in the exercise of probate matrimonial, admiralty or insolvency jurisdiction, which confers upon or takes away from any person any legal character, or which declares any person to be entitled to any such character, or to be entitled to any specific thing, not as against any specified person but absolutely. We are not quite sure whether judgments or orders rendered in the exercise of any other jurisdiction would have the effect of a judgment in rem. We were referred to no authority wherein it has been held that an order declaring the domicile of a person under Order 11 of RSC of England is a judgment in rem and that persons affected need not submit to the jurisdiction of the Foreign court which makes the declaration if otherwise they are not subject to its jurisdiction.

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It is seen from the above judgment that domicile is a mixed question of Law and fact and there is perhaps no chapter in the Law that has from such extensive discussion received less satisfactory settlement. Unless foreign Court has jurisdiction in the international sense, a judgment delivered by that Court would not be recognised or enforceable in India. The true basis of enforcement of forcing judgment is that the judgment imposes an obligation upon the defendant and therefore there must be connection between him and the forum. Persons affected by such judgment must submit to the jurisdiction of foreign Court which makes declaration if otherwise they are not subject to its jurisdiction.

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12. In the decision reported in (Smt. Satya Vs. Teja Singh) AIR 1975 Supreme Court 105, the Honourable Supreme Court relating to issues that whether Indian Courts bound to give recognition to divorce decree of foreign courts, what are tests required to determine domicie and residence and whether the validity of a foreign judgment can be decided in India on the terms of Section 13 C.P.C. has held in Para Nos. 8, 9, 45, 46, 49, 50, 52 and 53 thus:-

> "8. .....It is thus a truism to say that whether it is a problem of municipal law or of conflict of laws, every case which comes before an Indian court must be decided in accordance with Indian law. It is another matter that the Indian conflict of laws may require that the law of a foreign country ought to be applied in a given situation for deciding a case which contains a foreign element. Such a recognition is accorded not as an act of courtesy but on considerations of justice[9]. It is implicit in that process, that the foreign law must not offend against our public policy.
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> 9. We cannot therefore adopt mechanically the Rules of Private International law evolved by other countries. These principles vary greatly and are moulded by the distinctive social, political and economic conditions obtaining in these countries. Questions relating to the personal status of a party depend in England and North America upon the law of his domicil, but in France, Italy, Spain and most of the other European countries upon the law of his nationality. Principles governing matters within the divorce jurisdiction are so conflicting in the different countries that not unoften a man and a woman are husband and wife in one jurisdiction but treated as divorced in another jurisdiction. We have before us the problem of such a limping marriage.
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> 46. In this view, the Le Mesurier doctrine on which the High Court drew loses its relevance. The Privy Council held in that case that "the domicile for the time being of the married pair affords the only true test of jurisdiction to dissolve their marriage". The High Court assumed that the respondent was domiciled in Nevada. It then applied the old English rule that the wife's domicile, in all events, follows the domicile of the husband.
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> 49. Section 13(a) of the Code of Civil Procedure, 1908 makes a foreign judgment conclusive as to any matter thereby directly adjudicated upon

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except "where it has not been pronounced by a court of competent jurisdiction". Learned counsel for the respondent urged that this provision occurring in the Civil Procedure Code cannot govern criminal proceedings and therefore the want of jurisdiction in the Nevada court to pass the decree of divorce can be no answer to an application for maintenance under Section 488 of the Criminal Procedure Code. This argument is misconceived. The judgment of the Nevada court was rendered in a civil proceeding and therefore its validity in India must be determined on the terms of Section 13. It is beside the point that the validity of that judgment is questioned in a Criminal Court and not in a civil court. If the judgment falls under any of the clauses (a) to (e) of Section 13, it will cease to be conclusive as to any matter thereby adjudicated upon. The judgment will then be open to a collateral attack on the grounds mentioned in the five clauses of Section 13.

50. Under Section 13(e) of the Civil Procedure Code, the foreign judgment is open to challenge "where it has been obtained by fraud". Fraud as to the merits of the respondent case may be ignored and his allegation that he and his wife "have lived separate and apart for more than three (3) consecutive years without cohabitation and that there is no possibility of a reconciliation" may be assumed to be true. But fraud as to the jurisdiction of the Nevada court is a vital consideration in the recognition of the decree passed by that court. It is therefore relevant that the respondent successfully invoked the jurisdiction of the Nevada court by lying to it on jurisdictional facts. In the Duchess of Kingston Case De Grey, C.J. explained the nature of fraud in this context in reference to the judgment of a spiritual court. That judgment, said the learned Chief Justice, though res judicata and not impeachable from within, might be impeachable from without. In other words, though it was not permissible to allege that the court was "mistaken", it was permissible to allege that the court was "misled." The essential distinction thus was between mistake and trickery. The appellant's contention is not directed to showing that the Nevada court was mistaken but to showing that it was imposed upon.

52. Unhappily, the marriage between the appellant and respondent has to limp. They will be treated as divorced in Nevada but their bond of matrimony will remain unsnapped in India, the country of their domicil. This view, it is urged for the respondent, will lead to difficulties. It may. But "these rules of private international law

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are made for men and women --- not the other way round --- and a nice tidy logical perfection can never be achieved" (Per Denovan L, J: Formosa V. Formasa (1962) 3 ALL ER 419 at p.424.)

53. Our legislature ought to find a solution to such schizoid situation as the British Parliament has, to a large extent, done by passing the "Recognition of Divorces and Legal Separations Act, 1971". Perhaps, the International Hague Convention of 1970 which contains a comprehensive scheme for relieving the confusion caused by differing systems of conflict of laws may serve as a model. But any such law shall have to provide for the non-recognition of foreign decrees procured by fraud bearing on jurisdictional facts as also for the non-recognition of decrees, the recognition of which would be contrary to our public policy. Until then the Courts shall have to exercise a residual discretion to avoid flagrant injustice for, no rule of private international law could compel a wife to submit a decree procured by the husband by trickery. Such decrees offend against our notions of substantial justice."

In the above judgment, the Honourable Supreme Court, while dealing with Private International Law, domicile and foreign judgment noted that the foreign judgment must have been pronounced by a Court of competent jurisdiction. It is that court which the Law under which the parties are married recognised as a Court competent to entertain matrimonial disputes or the Court to which both the parties submit voluntarily. The foreign judgment must be given on merits on grounds available in Law under which the parties are married and arrived at after contest or consent between them. The foreign judgment must not be based on the refusal to recognise the Law of this Country. The proceedings in foreign Court must comply with the principles of natural justice. For this purpose, the foreign Court must ascertain that the defendant can present or represent before the Court. To that end, the plaintiff must have made necessary provisions for the respondent's cost and travel, residence and litigation, if the foreign judgment is not obtained by fraud It is also further held by the Honourable Supreme Court that a foreign decree of divorce obtained by husband in absentum of the wife without her submitting to its jurisdiction was not valid and binding when it was found from facts on record the decree of divorce was obtained by fraud or by making false representation as to its jurisdictional fact.

13. Section 13 of Hindu Marriage Act, 1955 grants relief to all the Hindus. Divorce can be granted under this Act only when one of the grounds laid down in Section 13 exist.

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14. In a matrimonial case, jurisdiction of the Court depends upon

the domicile, the place of solemnisation of marriage and residence and if there is difficulty regarding this, the place where the cause of action arise. Where the provisions as to jurisdiction specifically contain in a statute is impossible of satisfaction, the provisions of Section 20 of Civil Procedure Code, 1908 would be sufficient to create jurisdiction in the ordinary civil courts at a place where either the defendant resides or the cause of action can be said to arise.

15. To constitute domicile, two factors are essential i.e., (i) residence and (ii) intention to make a home. Domicile shall be classified into three categories i.e., (i) domicile by birth or origin (ii) by choice and (iii) by operation of law. The domicile of choice is acquired by combination of fact and intention. A man acquires a new domicile by taking up residence in a Country, which is not that of his domicile or origin and it is so with the intention that his residence should be permanent. To establish a change from domicile of origin to one of choice, cogent evidence is necessary and mere expression of intention is not sufficient. Hence, in the case on hand, the dispute regarding domicile can be decided only in the extensive trial of the suit.

16. The validity of foreign judgment rendered in civil proceedings must be determined in India on the terms of Section 13 CPC. Section 13 are the Rules of substantive Law and not merely of procedure. Followed (Raj Rajendra Sardar Maloji Nar Singh Rao Shitole vs. Shankar Saran and others) AIR 1962 Supreme Court Page NO.1737.

17. Validity of a foreign judgment in a civil proceedings is governed in India by Section 13 of Civil Procedure Code. In the decision rendered by the Hon'ble Supreme Court in Y. Narasimha Rao and others vs. Y. Venkatalakshmi and another 1991 Supreme Court Cases (Crl) 626, the Hon'ble Supreme Court interpreted Section 13 CPC in confirmity with public policy, justice, equity and good conscience with a view to protect sanctity of marriage of the Hindu family.

18. If the foreign judgment fall under any of the clauses of Section 13 CPC, it will cease to be conclusive as to any matter thereby adjudicated upon and will be open to collateral attack on the grounds mentioned in Section 13. Indeed, in the suit filed by the respondent herein, the foreign judgment granted in favour of the petitioner is challenged on the ground that it is an exparte decree, the Court which passed the decree has no jurisdiction and the decree was passed when the respondent was in India. Hence the forcing judgment obtained by the petitioner is open to challenge under Section 13 C.P.C.

19. An application for rejection of plaint under Order VII Rule 11 CPC can be decided by the Court on the basis of averments made in the plaint and filing of written statement by the contesting defendant is not necessary. Followed (Saleem Bhai and others vs. State of Maharashtra) AIR 2003 Supreme Court Page NO.759.

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20. Under Order VII Rule 11 CPC, the plaint shall be rejected in the cases mentioned in sub-clauses (a) to (f) therein. It is to be remembered that the said conditions are not exhaustive. On a meaningful, not formal reading of the plaint, if it is manifestly vexatious and meritless, in the sense of not disclosing a clear right to sue, then the trial court should exercise its power under this provision. It should take care to see that the grounds mentioned therein are fulfilled. Followed (T. Arivandandam vs. V. Satyapal and another) AIR 1977 Supreme Court 2421. In the said decision, it is further held by the Honourable Supreme Court that the counsel, as officer of justice can also contribute to the cause of justice by not screening wholly fraudulent and frivolous litigation and by not colloborating in shady actions.

21. In the absence of the conditions mentioned in Rule 11 of Order VII CPC or any other valid grounds, the application filed under this Rule is liable to be dismissed.

22. For the reasons mentioned above, this Court confirms the order of dismissal passed by the court below. The revision is dismissed. No costs. The trial court is directed to dispose of the suit on merits and in accordance with law, uninfluenced by any of the findings made in this order. Consequently, connected CMP is closed.

Sd/

Asst.Registrar

/true copy/

Sub Asst.Registrar

To
The Ist Additional Subordinate Judge
Erode

one cc to Mr.T.R.Rajaraman, Advocate SR.9116

one cc to Mr.R.Swaminathan, Advocate SR.8801

CRP.PD.No.2838 of 2003

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